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## DECISION

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548*[Protest Alleging Navy Solicitations Are Defective]*FILE: B-200030, B-200051,  
B-200052

DATE: May 5, 1981

MATTER OF:

Logistical Support, Inc.

DLG00639

DIGEST:

1. Procurement format which seeks to guarantee adequate performance under mess attendant contract is not defective for requiring each bidder to bid identical price for labor costs since bidders were allowed to make necessary adjustments in bids under only item to be priced by bidders--management and support.
2. Procurement format does not create unauthorized personal services contract since no employer-employee relationship is established between Government and successful contractor's personnel.
3. Protester's contention that experimental procurement format for mess attendant services is more expensive than prior procurement method, even if accurate, does not preclude agency from using procurement method which achieves valid minimum needs.

Logistical Support, Inc. (LSI), protests the awards of any contracts under invitations for bids (IFB) Nos. N00123-80-B-1693 (B-200030), N00123-80-B-1709 (B-200051), and N00123-80-B-1534 (B-200052) issued by the Naval Regional Contracting Office, Long Beach, California (Navy). The IFB's solicited bids for mess attendant services for three Naval Air Stations from October 1, 1980, through September 30, 1981, with two 1-year options.

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LSI argues that the solicitations are defective. However, we find nothing improper with the experimental format that the Navy used for these procurements.

The experimental format being used was developed by the Navy in response to problems it had encountered under formally advertised, fixed-price mess attendant contracts. According to the Navy, often after receiving an award, a contractor would reduce staff in order to minimize costs and maximize profit. The Navy found that this resulted in poor quality service, excessive Government supervision, and high contract administration costs. Consequently, the Navy decided to employ a solicitation format which could be tailored to the specific needs of each mess facility, thus obtaining the most efficient and economical service possible.

The format established an estimated maximum quantity of service units (mess attendant man-hours) needed to perform the contract. This quantity is then multiplied by a minimum service unit rate which is based on the applicable Department of Labor Wage Determination and other factors estimated by the Navy to be part of a contractor's labor expense. (This service unit rate becomes the Navy's billing rate.) After these two numbers have been multiplied together, the figure reached fixes the Navy's maximum labor costs under the contract. Each bidder is required to use this figure in its bid.

In the Navy's opinion, by using a maximum number of manning hours plus a fixed-service unit rate, it can ensure that any successful bidder will be able to meet the minimum acceptable performance standards required for the contract as well as comply with the wage provisions of the Service Contract Act. If a bidder should want to pay its employees higher wages or fringe benefits than those required by the appropriate Department of Labor Wage Determination, those increased costs are to be incorporated in the bidder's "Management and Support Price." The general purpose of the management and support price is to allow bidders

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an opportunity to include in their bids a sum to cover their management costs, overhead, and profit. Thus, price competition would occur only under the item for management and support.

In addition to the price that the contractor will receive for labor and management and support, the Navy also provides that the contractor can earn an "Award Amount"--that is, a cash bonus--for high quality performance. The IFB establishes criteria for a quarterly evaluation of the successful contractor's performance. If the contractor should be evaluated "excellent," it would receive the maximum award amount available for the quarter. If, on the other hand, the contractor receives an evaluation of less than "excellent," but remains within an acceptable range of performance, it would then receive a percentage of the maximum award amount based on the numerical rating it had received under the evaluation process. However, if the contractor's evaluation falls within the "minimum" or "submarginal" range, it would not be entitled to any part of the available award amount.

LSI previously protested the Navy's use of this format based on objections similar to those raised here relating to the use of a mandatory service unit rate and the alleged creation of an unauthorized personal services type contract. We denied the protest in Logistical Support, Inc., B-197488, November 24, 1980, 80-2 CPD 391. In that decision, we held that the imposition of a mandatory service unit rate on the bidders was not improper since bidders were given sufficient flexibility to price the item for management and support to adjust bids to fit particular needs. Furthermore, we rejected LSI's argument that the solicitation was structured so that a service contract was transformed into an unauthorized personal services contract. The Navy's format did not provide for the detailed Government direction or supervision of the contractor's employees which is necessary to create an employer-employee relationship between the Government and the successful contractor's personnel.

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The arguments that LSI presents in this protest are essentially those that we rejected in Logistical Support, Inc., supra. However, LSI does present a comparison of the costs of experimental format contracts with the costs for the formally advertised, fixed-price mess attendant contracts which the Navy had used previously. In LSI's opinion, these figures show that the Navy is paying a premium price for the services it is procuring.

We have recognized that the determination of the Government's needs and the best methods of accommodating those needs is primarily the responsibility of the Government contracting agencies. Consequently, we will not question an agency's determination of what its actual minimum needs are unless there is a clear showing that the determination has no reasonable basis. East Bay Auto Supply, Inc., B-195325, October 23, 1979, 79-2 CPD 281. Further, there is no requirement that an agency procure at a lower price without intelligent reference to the particular needs to be served. See Manufacturing Data Systems Incorporated, B-180608, June 28, 1974, 74-1 CPD 348; Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181.

As we found previously, we do not believe that LSI has made the necessary showing that the Navy's decision to use the experimental procurement format for the reasons stated was unreasonable. Therefore, even if LSI's cost figures are accurate, the payment of higher prices to achieve valid minimum needs is not objectionable.

Accordingly, LSI's protest is denied.

*Milton J. Fowler*

Acting Comptroller General  
of the United States